Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

GARY AND SYLVIE S., INDIVIDUALLY AND ON BEHALF OF THEIR SON, ANDREW S.

Petitioners,

v.

MANCHESTER SCHOOL DISTRICT

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Free Exercise Clause of the First Amendment permits the Federal government to force Andrew and his parents to violate their religious beliefs by requiring them to stop attending a religious school for part of the school week and attend public school full time in order to obtain the public benefit of special education services and protections that they are otherwise entitled to under federal law.

2. Whether it is an undue burden under the Religious Freedom Restoration Act to require Andrew and his parents to violate their religious beliefs by requiring them to stop attending a religious school for part of the school week and attend public school full time in order to obtain the public benefit of special education services and protections that they are otherwise entitled to under federal law.

3. Whether forcing Andrew's parents to violate their religious beliefs by requiring them to stop sending Andrew to a religious school for part of the school week and attend public school full time in order to obtain the public benefit of special education services and protections that they are otherwise entitled to under federal law violates their substantive due process rights to direct Andrew's educational and religious upbringing.

4. Whether treating Andrew differently than other public school students who receive special education services by not providing him with the same special education protections that other public school students receive because he attends a religious school for part of the school week violates equal protection when Andrew receives his special education services at the public school just like all the other public school students and nothing would change in terms of the services he receives if Andrew did attend public school full time.

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

None of the parties are corporations. The Manchester School District is a public school district in the state of New Hampshire.

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APPENDIX B - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED AND DECIDED JULY 1, 2004 ..... 27a

OPINION BELOW

On July 1, 2004, the First Circuit Court of Appeals affirmed the district court's opinion denying the parents' claims by granting summary judgment for the school district. The First Circuit opinion is reported as *Gary S. and Sylvie S., Individually and on behalf of their son Andrew S. v. Manchester Sch. Dist.*, 374 F.3d 15 (1st Cir. 2004). The district court opinion is reported under the same caption at 241 F.Supp.2d 111 (D.N.H 2003).

STATEMENT OF JURISDICTION

This Court's Jurisdiction is invoked under 28 USC § 1254(1). The First Circuit Court of Appeals entered judgment on July 1, 2004.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Free Exercise Clause of the 1st Amendment of the United States Constitution:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

2) Individuals with Disabilities Education Act, 20 U.S.C. § 1412 (A)(10)(a):

> IN GENERAL- To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):
>
> (I) Amounts expended for the provision of those services by a local educational agency shall be equal to a

proportionate amount of Federal funds made available under this part.

(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

3) Federal Regulations 34 CFR §300.454

(a) No individual right to special education and related services.

(1) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

STATEMENT OF THE CASE

This case is about a young boy named Andrew and his family, who have deep religious convictions about Andrew attending a religious school to receive religious instruction that he could not receive at public school. Their religious beliefs are an integral part of their daily lives. The sincerity of the religious beliefs of Andrew and his parents are not in dispute in this case.

At parochial school, Andrew's parents' faith is the focus of Andrew's school day. He is taught about their religious beliefs and principals on a daily basis.

Andrew also requires special education services. He receives special education services at the Manchester public school district in Manchester, New Hampshire. Unlike other students who receive special education services in the public school district, the trial court and the First Circuit Court of Appeals have determined that Andrew does not have the right to a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), because he also goes to a parochial school to receive religious and academic instruction for part of the school week.

Andrew and his parents have disputes with the school district regarding the school district's failure to provide Andrew with appropriate special education services and failing to provide services the school district agreed to provide. A parent with a child who attends public school full time could resolve these disputes through an administrative due process hearing, but the trial court and First Circuit determined that the IDEA takes away Andrew's right to a hearing because he does not attend public school full time.

The result is that Andrew has no right to receive any special education services from the school district and no right to a due process hearing to challenge the school district's failure to provide necessary special education services. Because Andrew has no right to FAPE or to a due process hearing, he and his parents have no meaningful recourse to address the school district's failures.

As a result, Andrew and his parents must choose between exercising their fundamental constitutional rights to exercise their religious beliefs and direct Andrew's religious and educational upbringing by sending him to a religious school, or have Andrew receive special education services that he is otherwise entitled to.

This Court has held in numerous similar cases that such a choice violates the Free Exercise Clause of the First Amendment and substantive due process protections. The United States District Court of New Hampshire and the First Circuit Court of Appeals rejected these claims finding instead that *Employment Div. Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990) applied and rendered the claims futile.

The applicable provisions of the federal special education laws as applied to Andrew and his parents also violate the Religious Freedom Restoration Act as they place an undue burden on Andrew and his parents' exercise of their religious beliefs that is not justified by any compelling interest and they also violate equal protection mandates as they treat Andrew differently than other similarly situated students who receive special education services at the Manchester public school district like Andrew.

This case is not about funding private school expenses or providing services at a private school. Andrew goes to the public school to receive special education services and all Andrew and his parents ask is that they be afforded the same rights as the other students that Andrew works with in his special education speech language class at the public school. Attending public school full time would not change the special education services that Andrew receives it would only deprive Andrew of the religious instruction he receives at parochial school.

REASONS FOR ALLOWANCE OF THE WRIT

I. The First Circuit Court of Appeals Applied a Standard to the Free Exercise Claim that Conflicts with Relevant Decisions of this Court and other Circuit Courts of Appeals.

A. *Smith* Does Not Apply In This Case.

The First Amendment does not permit the Federal government to force Andrew and his parents to violate their religious beliefs by requiring them to stop attending a religious school in order to obtain the public benefit of special education services and protections that they are otherwise entitled to under federal law. This Court has held on numerous occasions that this type of indirect compulsion poses a substantial burden on religion under the Free Exercise Clause.

For example, in *Sherbert v. Verner*, 374 U.S. 398 (1963), this Court held that applying the state unemployment statute in a manner that denied plaintiff benefits because she was exercising her religious beliefs unconstitutional. 374 U.S. at 402. The Court directly addressed the issue of whether the denial of benefits posed a burden on the free exercise of religion stating:

> The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden

upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship. *Id.* at 404.

Similarly, in *Hobbie*, 480 U.S. 138 (1987), the Court found that denying unemployment benefits to a person who refused to work on her Sabbath violated the Free Exercise Clause. The Court stated "the employee was forced to choose between fidelity to religious belief and continued employment; the forfeiture of unemployment benefits for choosing the former over the latter brings unlawful coercion to bear on the employee's choice." *Id.* at 144.

This Court reached the same result in *Thomas v. Review Bd. of the Indiana Employment Security Division*, 450 U.S. 707 (1981), which also involved the denial of unemployment benefits to a plaintiff who quit his job for religious reasons. 450 U.S. at 716.

Just like *Sherbert, Hobbie* and *Thomas*, the federal statute and regulations at issue in this case force Andrew and his parents to choose between fidelity to their religious beliefs or receiving governmental benefits. If they want to receive FAPE and a due process hearing they must forgo the exercise of their religious beliefs and the right to have Andrew attend parochial school for religious purposes.

Forcing Andrew and his parents to forgo these religious beliefs in order to receive FAPE and a due process hearing poses an undue burden on Andrew and his parents' fundamental right to free exercise of religion and to direct the religious and educational upbringing of their son.

The First Circuit Court of Appeals determined that the standards from *Sherbert, Hobbie and Thomas* did not apply in this case and instead used the rational basis test developed in *Employment Div. Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990). This finding conflicts with this Court's precedents and the language of *Smith* itself. In *Smith*, this Court held that the compelling interest test did not apply to "generally applicable prohibitions of socially harmful conduct." 494 U.S. at 882-885. Rather, such laws are constitutional as long as they have

a rational basis. *Id.; see also Church of the Lukumi Babaly Aye, Inc. v. City of Hialeah*, 113 S.Ct. 2217, 2226-27 (1993).

Smith however expressly left unchanged situations where the law at issue does not involve socially harmful or criminal conduct and deprives an individual a statutory benefit or right as a result of the individual exercising their free exercise rights. *Smith*, 494 U.S. at 881-882, 885. These claims are still governed by the compelling interest and undue burden standards employed in *Sherbert, Hobbie,* and *Thomas* which all involved the denial of statutory benefits or rights as a result of individuals exercising their free exercise rights. *Smith* did not overrule these cases and instead distinguished them. *Smith,* 494 U.S. at 876. The Court noted that unlike *Smith*, these cases did not involve conduct prohibited . The Court stated that this was a "critical distinction" between these cases and *Smith. Id.*

This case is exactly like the denial of benefits in *Sherbert, Hobbie* and *Thomas* and not at all like the criminal conduct at issue in *Smith*. This case does not involve a criminal statute or any laws that involve "socially harmful conduct." 494 U.S. at 882. Rather, just like *Sherbert, Hobbie* and *Thomas*, the federal statute and regulations at issue in this case force Andrew and his parents to choose between their religious beliefs or receiving governmental benefits. As a result, this Court should overturn the First Circuit's ruling and find that the strict scrutiny or undue burden analysis employed in *Sherbert, Hobbie* and *Thomas* applies in this case.

B. The Circuit Court Of Appeals Are Split On The Approach To Determine A Hybrid Rights Claim Under *Smith*

This case also fits into the hybrid situation left open by *Smith* where facially neutral laws of general application are still subject to strict scrutiny or undue burden analysis when those laws implicate the free exercise of religion and another constitutional right such as a parents' right to direct the upbringing and education of their children. *City of Boerne v. Flores*, 521 U.S 507, 514 (1997); *Smith*, 494 U.S. at 881.

This case is exactly the type of hybrid case the Supreme Court referred to in *Smith* and *Boerne*. In *Smith*, the Court expressly cited to *Wisconsin v. Yoder*, 406 U.S. 205 (1972) as the example of the hybrid exception because it involved laws of general application that implicated the right to free exercise of religion and the right to direct the upbringing of children established in *Pierce*. 494 U.S. at 881. This case involves those same fundamental rights.

As this Court noted in *Yoder*, when the fundamental right to free exercise of religion and the fundamental right to direct the upbringing of children are combined "there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability." *Yoder*, 406 U.S. 1535.

The right to free exercise of religion and to direct the upbringing and education of Andrew are intertwined in this case much as they were in *Yoder*. This case involves Andrew and his parents' rights to free exercise of religion and his parents' right to direct the upbringing of their son and control his education.

Andrew's parents have a fundamental right to exercise their religious beliefs and to direct the religious and educational upbringing of their son by sending him to parochial school for religious purposes. *Yoder*, 406 U.S. at 232. These rights are central to Andrew and his parents' constitutionally protected religious rights under the Free Exercise Clause and their constitutionally protected individual liberty and privacy rights under the Due Process Clause. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Yoder*, 406 U.S. at 214, 232.

Andrew's parents have the right, "coupled with the high duty, to recognize and prepare [Andrew] for additional obligations." *Pierce*, 268 U.S. at 535. This duty "must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." *Yoder*, 406 U.S. at 233.

In order to obtain the right to FAPE and a due process hearing, Andrew's parents must stop sending Andrew to parochial

school and send Andrew to public school full time. This requirement forces Andrew and his parents to violate their religious beliefs and to forgo their right to direct Andrew's religious and educational upbringing. Conditioning the receipt of benefits on violating or foregoing the exercise of religious beliefs is patently unconstitutional.

The Court's of Appeals in various circuits are split on the approach to take to determine if a claim falls into the hybrid rights category. A panel of the First Circuit has applied a form of an "independent infringement standard" to determine when the hybrid standard applies. Under this standard, a litigant must demonstrate that they have an independent claim for a free exercise violation and an independent claim for another constitutional violation in order to trigger hybrid status. *Brown v. Hot, Sexy, Safer Productions*, 68 F.3d 525, 539 (1st Cir. 1995).

Other Circuit Courts of Appeal have adopted this approach as well. *EEOC v Catholic University of American*, 83 F.3d 455 (D.C.Cir. 1996).

Other Circuit Courts of Appeal have adopted a "colorable claim" approach to determine when the hybrid exception applies. *See e.g. Swanson v. Guthrie Indep. Sch.*, 135 F.3d 694, 700 (10th Cir. 1998); *Miller v. Reed,* 176 F.3d 1202, 1207-08 (9th Cir. 1999). These courts require "colorable showing of infringement" of recognized and specific constitutional rights rather than the mere invocation of a general right. *See Id.* Yet other Circuit Courts of Appeals have refused to recognize the hybrid doctrine at all until this Court tells them to do so. *Kissinger v. Board of Trustees*, 5 F.3d 177 (6th Cir. 1993).

In this case, Andrew and his parents' free exercise claims are conjoined with independently protected constitutional rights to direct Andrew's educational and religious upbringing. The free exercise rights and the right to direct Andrew's upbringing are intertwined in this case.

This Court should clarify which standard applies in this area to resolve the split among the circuit court of appeals and rule that Andrew's claim falls into the hybrid rights category.

II. The First Circuit Applied A Standard To The Substantive Due Process Claims That Conflicts With This Court's Precedents.

The First Circuit addressed Andrew and his parents' substantive due process claims under an "unconstitutional condition" analysis. The court employed an incorrect legal standard and erred in finding that the federal law's requirements as applied in this case are constitutional.

The court compared the conditions in this case to the conditions in *Harris v. McCrae*, 448 U.S. 297 (1980); *Maher v Roe*, 432 U.S. 464 (1977) and *Strout v Albanese*, 178 F.3d 57 (1st Cir. 1999). Those cases are not analogous to the case at bar. The difference between this case and those cases is that this case involves a penalty while those cases involve simply a failure to subsidize. See Kathleen Sullivan, *Unconstitutional Conditions*, 102 HVLR 1413 (1989); Cass R. Sunstein, *Why the Unconstitutional Conditions Doctrine is an Anachronism (With Particular Reference to Religion, Speech and Abortion)*, 70 B.U.L.Rev 593 (1990).

This case does not involve any subsidies or payments for sectarian education. Andrew and his parents are not asking for any subsidy to attend private school or for the state or school district to pay or contribute in any way towards the services Andrew receives at parochial school. The issues in this case involve only the special education services Andrew receives at public school. Unlike the other students who receive special education services at Manchester public school, federal law and the Manchester school district have taken away Andrew's right to FAPE and to a due process hearing.

The result of this deprivation is that Andrew and his parents have no right to services and no meaningful recourse when the school district fails to provide Andrew with the special education services he requires. Andrew and his parents simply seek the same right to FAPE and due process that other students who receive special education services at Manchester receive. The

federal law requires them to forgo their religious beliefs in order to obtain these benefits.

The court found that the federal provisions that deprive Andrew and his parents of the right to FAPE and a due process hearing were constitutional because they were "germane" to the benefit at stake which the court construed to be the right to attend private school.

The right at issue is not the right to attend private school. Andrew receives his special education at public school. The issue is that Andrew and his parents are forced to forgo exercising their religious beliefs and directing Andrew's religious and educational upbringing in order to get the benefit of special education services. There is no legitimate reason for this condition. It should not matter where Andrew receives other educational and religious services as long as he receives his special educational services at the public school (which he does).

Under this Court's precedents, the analysis in this case should not be the germaneness of the condition, but whether the government's interest outweighs the constitutional right at stake. In order for the government to condition a grant of a discretionary benefit on the release of a constitutional right, the government must have an interest which outweighs the particular right at issue. *See* 16A Am. Jur. 2d Constitutional Law § 395; *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983); *Burdick v. Takushi,* 504 U.S. 428, 434 (1992); *Lorenz v. State,* 928 P.2d 1274, 1278 (Colo. 1996) *cert. denied* 117 S.Ct. 1433 (U.S. 1997); *see also Sherbet, Thomas, Hobbie, supra.* If the condition is severe in impact or in character, then the state must put forth counter-balancing interests of greater weight in order to sustain the restriction. *Id.*

In this case, the condition is severe in character as it requires Andrew and his parents to forego two fundamental constitutional rights (the right to exercise their religious beliefs and the right to direct Andrew's religious and educational upbringing) in order to obtain the right to FAPE and to a due process hearing that other children who receive special education services at public school receive.

By taking away the substantive right to FAPE , the federal law removes any requirement that the school district provide Andrew with necessary special education services even though he would otherwise be entitled to them under the law. Instead, the school has the *absolute discretion* to determine what services it will provide Andrew. 34 CFR § 300.450, 452-457. The absence of the right to FAPE also takes away any opportunity for Andrew and his parents to challenge the school district's failure to provide services to Andrew through a due process hearing.

The complaint process that the court mentioned does not provide any meaningful recourse to Andrew and his parents because it can only determine if the school district has followed the procedural aspects of the regulations that take away Andrew's right to FAPE and due process. The only benefit to Andrew from these regulations is that they require the school to meet and determine what services (if any) the school will provide Andrew. Unlike a due process hearing, the complaint process for Andrew cannot determine if the school failed to provide Andrew necessary services because Andrew has no right to services under the law. The complaint process cannot require the school district to provide Andrew services nor award him compensatory education for the school district's failure to provide the services it agreed to provide. *Id.*

This Court should rule that the First Circuit erred by failing to properly balance the interests at stake as required by *Anderson* and *Burdick* and employ the analysis and standards used by *Sherbert, Hobbie* and *Thomas*.

This Court should find that the conditioning the receipt of FAPE and due process hearing on relinquishing the right to free exercise of religious beliefs and directing Andrew's religious and educational upbringing violates substantive due process.

III. The Federal Provisions At Issue Are An Undue Burden Under The Religious Freedom Restoration Act.

The Religious Freedom Restoration Act (RFRA) prohibits the government from substantially burdening a person's exercise of

religious beliefs, even if the burden results from a rule of general applicability, unless the government demonstrates that the burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. § 2000bb.

RFRA requires courts to apply the law as set forth in *Sherbert a*nd *Yoder*, 406 U.S. 205 (1972). 42 U.S.C. §2000bb(b)(1*); Jolly v. Coughlin,* 76 F.3d 468 (2nd Cir 1996). In this case, Andrew and his parents have established that their beliefs are sincere and based upon their religious faith. Those issues are not in dispute and the First Circuit assumed they were sincere in its decision. Andrew's parents have also established that the IDEA and its implementing regulations place a substantial burden on their exercise of their religious beliefs by forcing them to choose between fidelity to those beliefs or obtaining FAPE and a due process hearing.

The burden placed on Andrew and his parents is identical to those burdens at issue in *Sherbert* and *Yode*r. This Court said explicitly in those cases that forcing to choose between following the precepts of their religion and forfeiting benefits puts the same kind of burden upon the free exercise of religion as would a fine imposed against the person for worshiping their faith. *Sherbert*, 374 U.S. at 403-404.

Under the RFRA, such burdens are substantial and must be justified by a compelling state interest in the least restrictive manner. 42 U.S.C. § 2000bb-1(b)(1) and (2). The defendant cannot establish that the governmental interest in this case is compelling and that it is the least restrictive means of furthering the government's interests.

For these reasons, the IDEA and its implementing regulations as applied to Andrew and his parents violates the RFRA and the First Circuit erred in finding otherwise.

IV. The First Circuit's Finding That The Federal Provisions Do Not Violate Equal Protection Conflict's with this Court's Precedents.

The IDEA and its implementing regulations deny Andrew equal protection by depriving him FAPE and a due process hearing when other students who receive special education services at public school like Andrew have these rights. Andrew attends public school to receive special education services just like any other public school student. Yet, unlike these other students, Andrew is not afforded the right to FAPE or to a due process hearing.

Because denying Andrew and his parents the right to FAPE and to a due process hearing denies Andrew the right to access an adequate education and a "basic floor of educational opportunity" under federal law, the denial must be viewed under heightened scrutiny.

This Court has stated that the equal protection clause requires that similarly situated individuals be treated similarly. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Andrew goes to the Manchester public schools to receive special education services just like students who attend Manchester public school full time do. He is similarly situated with these students in this regard. However, the IDEA and its implementing regulations as applied to Andrew in this case by the hearing officer and the district court, treat Andrew differently than the other students that receive special education services in Manchester public schools. Unlike, these other students, Andrew is not entitled to FAPE and he is not entitled to a due process hearing.

Governmental action that treats similarly situated individuals differently must be justified. Given the importance of education in our society, the justification for treating similarly situated individuals differently with respect to educational benefits must be justified by more than some rationally related interest.

Rather, the government must establish that the deprivation furthers some substantial interest. *Plyler,* 457 U.S. 202, 216, 223, 230. In *San Antonio Indep. Sch. Dist. v. Rodriguez,* 411 U.S. 1, 35 (1973), this Court found that education is not a fundamental right for purposes of education funding. However, the Court also noted the importance of education and expressly left open the issue of whether the denial of a "minimally adequate education" would be

subjected to heightened scrutiny. *Rodriguez*, 411 U.S. at 37; *Papasan v. Allain,* 478 U.S. 265, 284-86 (1986).

A free and appropriate public education is a minimally adequate education for students with disabilities. In *Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley,* 458 U.S. 176 (1972), this Court held that FAPE required "a basic floor of opportunity" for students with disabilities. Subsequent courts have found FAPE to be the minimum education required for students with disabilities under federal law. *See e.g. G.D. v. Westmoreland School Dist.*, 930 F.2d 942, 948 (1st Cir. 1991).

The provisions of the IDEA and its implementing regulations as applied to Andrew in this case take away the right to a "basic floor of opportunity" and to the fundamental right to an adequate education under state law that is incorporated into the definition of FAPE. As a result, Andrew has been deprived of the right to a minimally adequate education much like the children in *Plyler* were denied the right to an education that others received. While Andrew does receive some educational services from the school district, the federal statute and regulations have taken the minimal requirements of FAPE away from him.

This Court should rule that the First Circuit erred by not viewing the relevant statutory provisions and regulations that deprive Andrew of a minimally adequate education with heightened scrutiny.

The relevant statutory provisions and regulations that deprive Andrew of a minimally adequate education do not serve a substantial governmental interest. The governmental interest here is simply reducing state and local obligations to provide services and funds for education to students in private school. As the Court noted in *Plyler*, the government may not reduce expenditures by barring a class of students from its schools. 457 U.S. 202, 230. *Shapiro v. Thompson,* 394 U.S. 618, 633 (1963).

In *Plyler,* this Court expressly rejected the argument that the government could single out undocumented children for exclusion from school because of the special burdens they impose

on the state's ability to provide high-quality education. *Plyler*, 457 U.S. at 230.

In this case, the federal government has by regulation deprived Andrew of the right to receive the same special education services that other similarly situated students at public school receive. Andrew has received speech-language services in a small group at a Manchester public school. The other three or four students in Andrew's group have the right to FAPE and to a due process hearing if they disagree with the services the school provides. Andrew, who was in the same class receiving the same services by the same staff in the same school, does not have the same rights. Much like the State of Texas did not have a substantial interest in denying immigrant children the right to attend public school in order to save money, the federal government in this case does not have a substantial interest in depriving Andrew of these rights simply because he does not attend public school full-time.

For these reasons, this Court should find that the federal laws at issue as applied to Andrew violate Equal Protection.

CONCLUSION

For all the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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